

**REDACTED DECISION -- 08-089 RPD -- BY GEORGE V. PIPER, ALJ --
SUBMITTED for DECISION on JULY 23, 2008 -- ISSUED on JULY 30, 2008**

SYNOPSIS

PERSONAL INCOME TAX -- FEDERAL LAW ENFORCEMENT OFFICER'S RETIREMENT BENEFITS NOT FULLY EXCLUDED WHEN QUALIFIED FOR SOCIAL SECURITY BENEFITS -- Retired federal corrections officer who performed duties similar to those performed by West Virginia state fire fighters and police officers, but who could collect social security benefits, may not fully exclude his retirement benefits from the West Virginia personal income tax, pursuant to the Monongalia County Circuit Court ruling in *Dodson v. Palmer* (2000), and pursuant to W. Va. Code § 11-21-12(c)(6), as amended, because that ruling is applicable only to those federal law enforcement officers who were unable to collect social security benefits.

FINAL DECISION

On February 26, 2008, the Petitioner filed a claim for refund for the tax year 2007. The Personal Income Tax Unit of the Internal Auditing "Division" of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent"), by letter dated April 4, 2008, totally denied the refund claim as not being supported by statutory law.

Thereafter, by mail, postmarked May 8, 2008, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. *See* W. Va. Code §§ 11-10A-8(2) [2002] & 11-10A-9(a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10-A-10 [2002].

FINDINGS OF FACT

1. Petitioner was employed by the Federal Bureau of Prisons (“FBOP”) from March 4, 1984 through October 31, 2006, and was placed in the Federal Employees Retirement System (“FERS”) which qualified Petitioner for social security benefits.
2. During his tenure with the FBOP, Petitioner served first as a corrections officer and then later as a maintenance worker supervisor over prison inmates.
3. Bases upon the documentation presented at hearing, Petitioner qualifies as a federal law enforcement officer.

DISCUSSION

Because Petitioner qualifies as a federal law enforcement officer, the only issue which remains to be determined is whether, based upon the facts in this case, Petitioner qualifies for the tax exemption in W.Va. Code § 11-21-12 (c) (6), as amended, pursuant to the holding in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County, W. Va., Cir. Ct. 2000).

The statutory law of the State of West Virginia explicitly excludes, fully, from state income tax, those pensions and annuities paid to retired “West Virginia police officers,” West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. West Virginia Code § 11-21-12(c) (6), as amended.

For purposes of establishing special retirement eligibility, the Federal Office of Personnel Management has defined a federal “law enforcement officer” to mean “an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. 5 C.F.R. § 831.902; *see also* 5 C.F.R. §§ 831.901 & 831.903. The federal government has also distinguished such “law enforcement officers” from

other civil service employees, including military personnel, in that the federal “law enforcement officers” retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees’ retirement benefits.

According to the ruling of the Circuit Court of Monongalia County, West Virginia, in *Dodson v. Palmer*, a person who proves that he or she worked as a federal “law enforcement officer” and did not qualify to receive social security benefits while working in that job may exclude all of his or her federal retirement income from that job, for purposes of the West Virginia personal income tax (akin to the total exclusion for West Virginia police and firefighters’ retirement income).

Since the 2000 ruling in *Dodson v. Palmer* this tribunal has consistently applied the language contained therein in a literal fashion and without further expansion, because

exemptions and deductions from tax must be strictly construed against the person claiming the exemption or deduction. *See* Syl. Pt. 1, *RGIS v. Palmer*, 209 W. Va. 152, 544 S.E. 2d 79 (2001); *See also* Syl. Pt. 4, *Shawnee Bank, Inc. v. Paige*, 200 W.Va. 20, 488 S.E. 2d 20 (1997).

Because Petitioner did not prove that, as a federal law enforcement officer, he did not qualify to receive social security benefits, this tribunal has no recourse but to find that Petitioner may not fully exclude his federal retirement benefits from the measure of the West Virginia personal income tax.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the petitioner-taxpayer, to show that the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002] and W Va. Code St R. § 121-1-63.1 (April 20, 2003).

2. The Petitioner has not carried the burden of proof with respect to the issue of whether Petitioner is entitled to the same treatment as the taxpayer in the *Dodson* ruling discussed above, because Petitioner does qualify to receive social security benefits as a federal law enforcement officer.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of West Virginia

personal income tax, for the tax year 2007, in the amount of \$_____ should be and is hereby **DENIED.**